

AUG 18 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

<p>UNITED STATES OF AMERICA,</p> <p>Plaintiff - Appellee,</p> <p>v.</p> <p>JOHN FREDERICK JAEGER,</p> <p>Defendant - Appellant.</p>

Nos. 06-30621
06-30622

D.C. Nos. CR-05-00023-2-DWM
CR-06-00003-DWM

MEMORANDUM*

Appeals from the United States District Court
for the District of Montana
Donald W. Molloy, Chief District Judge, Presiding

Argued and Submitted May 5, 2008
Seattle, Washington

Before: ALARCÓN, GRABER, and RAWLINSON, Circuit Judges.

Defendant John Frederick Jaeger appeals his conviction and sentence on drug and firearms charges. Relevant facts are set forth in an opinion published this date. This memorandum disposes of the issues not covered in that opinion.

1. The district court did not clearly err in issuing the search warrants. See Dawson v. City of Seattle, 435 F.3d 1054, 1062 (9th Cir. 2006) (providing our

* This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

standard of review). Considering the totality of the circumstances, there was a substantial basis to conclude that there was a fair probability that evidence of a crime might be found in Defendant's pickup truck and homes. See United States v. Gourde, 440 F.3d 1065, 1069 (9th Cir.) (en banc), cert. denied, 127 S. Ct. 578 (2006) (stating standard for issuance of search warrant).

2. Sufficient evidence supported Defendant's conviction for conspiracy. See United States v. Hernandez-Herrera, 273 F.3d 1213, 1218 (9th Cir. 2001) (reviewing de novo a trial court's denial of a motion for acquittal). A rational trier of fact could conclude beyond a reasonable doubt that the direct and circumstantial evidence—including the testimony of Staudenmayer, Caldwell, and Hoffman—proved an agreement to distribute methamphetamine. See id. (describing standard); United States v. Iriarte-Ortega, 113 F.3d 1022, 1024 (9th Cir.), amended on denial of reh'g, 127 F.3d 1200 (9th Cir. 1997) (listing elements of drug conspiracy).

3. Applying the Supreme Court's recent decision in Gall v. United States, 128 S. Ct. 586 (2007), we conclude that the sentence imposed was both procedurally and substantively reasonable. The court calculated the base offense properly, erring on the side of caution in approximating drug quantity; acknowledged that the Sentencing Guidelines range was advisory only; gave the

parties an opportunity to argue for a sentence through written objections and in open court; and considered the factors in 18 U.S.C. § 3553(a). The resulting sentence was at the low end of the applicable Guidelines range and was reasonable.

AFFIRMED.